

<sup>3</sup> The Board notes that, following the September 18, 2017 decision, OWCP received additional evidence. Appellant also submitted new evidence accompanying his request for appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On May 23, 2017 appellant, then a 47-year-old senior officer specialist, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his left knee when he got up from a chair while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on the date of injury.

OWCP subsequently received medical evidence, including attending physician's reports (Form CA-20) dated June 13 and 27, 2017 by Dr. Robert M. Shalvoy, an attending Board-certified orthopedic surgeon. Dr. Shalvoy noted that appellant sustained a left knee injury on May 23, 2017. He diagnosed acute lateral meniscus tear of the left knee, initial encounter, and checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Shalvoy indicated that appellant was totally disabled for the period June 6 to September 1, 2017. He advised that appellant could not work, pending a magnetic resonance imaging (MRI) scan to rule out a lateral meniscus tear.

In a development letter dated June 28, 2017, OWCP informed appellant that, when his claim was received, it appeared to be for a minor injury that resulted in no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It reopened the claim for formal consideration of the merits because he had not returned to work in a full-time capacity. OWCP requested that appellant submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the reported work incident caused or aggravated his medical condition. It also provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP received a progress note dated June 6, 2017 by Jessica Morse, a certified physician assistant, who diagnosed acute lateral meniscus tear of the left knee, initial encounter.

OWCP also received a letter dated July 6, 2017 by Dr. Shalvoy who opined that appellant's left knee injury, along with his history and examination, was concerning for an acute lateral meniscus tear. Dr. Shalvoy further opined that this condition was a result of his May 23, 2017 work-related injury.

On July 24, 2017 appellant responded to OWCP's development questionnaire. He essentially reiterated the factual history of injury he provided on the May 23, 2017 CA-1 form. Appellant responded "not applicable" when asked to provide witness statements. He maintained that the medical evidence already submitted established that he had a torn meniscus of the left knee and that he was waiting for a left knee MRI scan. Appellant indicated that he had not sustained any other injury on or off duty between the date of injury and the date he first reported his injury to a physician. He again responded "not applicable" when asked to describe his condition between the date of injury and the date he received medical attention and the nature and frequency of any home treatment. Appellant related that he did not have any similar disability or symptoms before the claimed injury.

By decision dated August 3, 2017, OWCP accepted that the May 23, 2017 employment incident occurred as alleged, that a medical condition had been diagnosed, and that the employment incident was within the performance of duty. However, it denied appellant's traumatic injury claim because the medical evidence of record was insufficient to establish that his medical condition was causally related to the accepted employment incident.

On August 21, 2017 appellant requested reconsideration. He also submitted an employing establishment health unit report dated May 23, 2017 containing an illegible signature, which provided an assessment of weakness, weight-bearing left leg that was unable to ambulate without a cane.

Appellant further submitted an additional Form CA-20 report dated August 15, 2017 from Dr. Shalvoy who reiterated his diagnosis of acute lateral meniscus tear of the left knee, initial encounter, and again checked a box marked "yes" indicating that this condition was caused or aggravated by the May 23, 2017 employment activity. Dr. Shalvoy noted that appellant was totally disabled from July 24 to September 26, 2017. He restated the need for a left knee MRI scan to rule out a lateral meniscus tear.

Appellant resubmitted Ms. Morse's June 6, 2017 report and Dr. Shalvoy's July 6, 2017 letter.

OWCP, by decision dated September 18, 2017, denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), finding that the evidence submitted was irrelevant, duplicative, and repetitious.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. It may review an award for or against payment of compensation at any time based on its own motion or on application.<sup>4</sup>

A claimant seeking reconsideration of a final decision must present arguments or provide evidence which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see also* *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.608(a); *see also* *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>7</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).<sup>8</sup>

In his timely application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP.<sup>9</sup> Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

The underlying issue in this case is whether appellant sustained a left knee injury causally related to the accepted May 23, 2017 employment incident. That is a medical issue which must be addressed by relevant medical evidence not previously considered.<sup>11</sup> On reconsideration appellant submitted Dr. Shalvoy's new August 15, 2017 Form CA-20 report in which he continued to diagnose an acute lateral meniscus tear of the left knee, initial encounter, and check a box marked "yes" indicating that this condition was caused or aggravated by the May 23, 2017 employment incident. Dr. Shalvoy also continued to address appellant's total disability from work and need to undergo a left knee MRI scan to rule out a lateral meniscus tear. The Board finds that Dr. Shalvoy's report although new, is cumulative and substantially similar to his previously submitted reports. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.<sup>12</sup>

Appellant also submitted a May 23, 2017 employing establishment health unit report which included an illegible signature, providing an assessment of weakness, weight-bearing left leg that was unable to ambulate without a cane. Since this report contains an illegible signature, the Board finds that it is of no probative value as it is not established that the author is a physician.<sup>13</sup>

Appellant resubmitted Ms. Morse's June 6, 2017 report and Dr. Shalvoy's July 6, 2017 report. As noted above, evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>14</sup> Because appellant's request for reconsideration

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<sup>8</sup> See *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019).

<sup>9</sup> See *R.S.*, *id.*; *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>10</sup> *Id.*

<sup>11</sup> See *A.M.*, Docket No. 18-1033 (issued January 8, 2019); see also *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>12</sup> See *A.G.*, Docket No. 19-0113 (issued July 12, 2019); *L.R.*, Docket No. 18-0400 (issued August 24, 2018).

<sup>13</sup> See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>14</sup> *Supra* note 12.

did not include relevant and pertinent new evidence not previously considered he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>15</sup>

The Board accordingly finds that, as appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.<sup>16</sup>

On appeal appellant contends that the employing establishment failed to submit the required medical records to OWCP, and that OWCP never requested his complete medical record from his orthopedic physician, which would have established a work-related medical diagnosis. However, as previously noted, the Board lacks jurisdiction over the merits of the case and appellant has not met any of the necessary regulatory requirements to warrant further merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>15</sup> 20 C.F.R. § 10.606(b)(3)(iii); *see D.P.*, Docket No. 17-0290 (issued May 14, 2018).

<sup>16</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board